Supreme Court, U. S.
F I L E D
OCT 29 1976
MICHAEL RODAK, JR., CLERK

In The

Supreme Court of the United States

October Term, 1975

1975 No. 72, Original

STATE OF SOUTH DAKOTA,

Plaintiff,

vs.

STATE OF NEBRASKA,

Defendant.

ANSWER

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ANSWER

COMES NOW the defendant, State of Nebraska, by its Attorney General, Paul L. Douglas, and states as follows in answer to the plaintiff's Complaint:

I.

The defendant makes no response to the allegations of jurisdiction contained in paragraph I of the Complaint.

II.

The defendant admits that this action involves an island located in the Missouri River commonly referred to as Elk Island or Rush Island, but denies that Elk Island and Rush Island are presently or were originally separate and distinct islands. The defendant admits that the present northern boundary of the disputed island is a branch channel of the Missouri River which is artificially obstructed by the Yankton, South Dakota, City Dump. The subject island is located north of the present main channel of the Missouri River. The defendant denies the other material allegations of paragraph II of the Complaint, and specifically denies that the subject island lies within the boundaries/borders of the State of South Dakota.

III.

The defendant admits that it contends that the subject real estate lies within the boundaries/borders of the State of Nebraska.

IV.

The defendant denies the allegations of paragraph IV of the Complaint.

V.

(a) The defendant admits that portion of paragraph V (a) of plaintiff's complaint which alleges that the plaintiff has instituted an action to quiet title to a portion of the disputed real estate in its own courts, and that the South Dakota Circuit Court would have no jurisdiction should the disputed real estate be determined to be within

the boundaries of the State of Nebraska. The defendant denies that portion of paragraph V (a) which alleges that its contentions are causing delay and uncertainty in that proceeding, however, for the reason that the defendant is not a party to that proceeding and has made no contentions therein, and furthermore for the reason that the South Dakota Circuit Court has the authority to determine its own jurisdiction so that any delay and uncertainty is unnecessary.

(b) The defendant admits that the State of Nebraska or political subdivisions thereof have collected real estate taxes levied against the disputed real estate for a considerable number of years, and that it is intended that such practice shall continue in the foreseeable future. The defendant denies that portion of paragraph V (b) which alleges that taxation by the defendant has resulted in a considerable loss of revenue for the plaintiff since the plaintiff has no jurisdiction over such real estate, has no right to such revenues received, and has never itself attempted to levy real estate taxes against the disputed real estate.

(c) The defendant denies the allegations contained in paragraph V (c) of plaintiff's complaint in that it has historically been recognized by various state and local agencies and subdivisions of both states that the disputed real estate was and is within the boundaries of the State of Nebraska for administrative purposes. The defendant has no knowledge concerning plaintiff's allegations that various state and local agencies and subdivisions of the State of South Dakota have been "confused" concerning the location of the disputed real estate within its boundaries, and therefore denies said allegations.

VI.

The defendant states that the following described real estate and accretions thereto lie within the boundaries of the State of Nebraska:

Rush Island in the Missouri River, said island being a part of Sections 5, 6, and 7, Township 33, Range 1 East, Cedar County, Nebraska, according to the original Government Survey and which is more fully and particularly described in the Surveyor's Record No. 5, page 70 as follows: Commencing at the section corner of Sections 7 and 8, in Township 33, Range 1 East, Cedar County, Nebraska, as is located by the survey recorded in Surveyor's Record, Volume 4, page 29 of the records of Cedar County, Nebraska, thence running due north from this corner 5060 feet to the point of beginning designated as "A" on the attached map, thence running 710 feet north 81 degrees east, thence 805 feet north 68 degrees east, thence 942 feet north 59 degrees east, thence 326 feet north 88 degrees east, thence 874 feet north 84 degrees east, thence 862 feet south 54 degrees east, thence 305 feet north 58 degrees east, thence 1140 feet north 65 degrees east, thence 1315 feet north 5 degrees east, thence 805 feet north 60 degrees west, thence 1800 feet north 69 degrees west, thence 1225 feet north 72 degrees west, thence 2080 feet north 79 degrees west, thence 1390 feet north 57 degrees west, thence 1160 feet north 86 degrees west, thence 582 feet south 84 degrees west, thence 1090 feet south 55 degrees west, thence 1980 feet south 89 degrees west, thence 688 feet south 47 degrees west, thence 1400 feet south 20 degrees west, thence 1415 feet south 55 degrees west, thence 865 feet south 78 degrees east, thence 588 feet south 87 degrees east, thence 2220 feet south 72 degrees east, thence 2530 feet south 78 degrees east, thence 1890 feet south 62 degrees east, thence 425 feet south 71 degrees east to the point of beginning, containing 994 acres more or less, all in Township 33, Range 1, East in Cedar County, Nebraska.

VII.

The defendant states that the main channel of the Missouri River at the time of the creation of Nebraska Territory, Dakota Territory and the State of Nebraska, as well as at all other times pertinent to this lawsuit, flowed to the north of the present island. Subsequently, due to a series of avulsions followed by the construction of Gavins Point Dam in the middle 1950's several miles upstream from said island, the main channel of the Missouri River has stabilized to the south of the said island. The channel north of said island is presently artificially obstructed by the Yankton, South Dakota, City Dump.

VIII.

The defendant states that since its inception it has considered said island to be within its jurisdiction, and that the State of Nebraska, its agencies and subdivisions, have historically dealt with such island as part of the State of Nebraska. The plaintiff, however, has only very recently attempted to make any claim concerning said island, prior to which the State of South Dakota, its agencies and subdivisions had for a long period of time acquiesced in the exercise of jurisdiction over the island by the State of Nebraska, its agencies and subdivisions.

WHEREFORE, defendant prays:

1. That the relief prayed for by plaintiff be denied and that plaintiff's complaint be dismissed.

2. That a decree be entered declaring that the real estate in dispute is located within the boundaries of the State of Nebraska.

3. That if the court deems it necessary to appoint a special master, the special master be initially directed to make findings and recommendations only concerning the issue as to whether the plaintiff has acquiesced in the defendant's exercise of sovereignty for a sufficient period so that the disputed island should be legally considered to be within the boundaries of the State of Nebraska, thereby eliminating the necessity of both parties expending a great deal of time and expense litigating other unnecessary issues.

4. That defendant recover its costs and disbursements, including reasonable attorney's fees.

5. For such other relief as this court may deem equitable under the circumstances.

Dated this 27th day of October, 1976.

Respectfully submitted,

PAUL L. DOUGLAS
Attorney General
State of Nebraska